KABRA HOLDINGS SDN. BHD.

v.

AHMAD SHAHLAN & ORS. & OTHER PERSONS UNKNOWN

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[ORIGINATING SUMMONS NO. S7-24-469-1989]
30 OCTOBER 1990

CIVIL PROCEDURE: *Merits of application heard and decided upon - No appeal - Application to set aside - Res judicata - Estoppel- Stay of execution.*

LAND LAW: *Application to set aside order of possession - Occupation without licence or consent - Squatters - Application for possession not contested - As Counsel had no instructions - Whether verbal promise made by Menteri Besar allowing defendants to occupy land - Imperative - Whether in law binds state authority.*

The plaintiff applied to recover possession of the disputed land on the ground that the plaintiff is entitled to possession and the defendants are in occupation without licence or consent. The defendants' earlier solicitor did not contest the application on the grounds that he had no instructions to do so. After hearing submission and reading the affidavit, order in terms of the application was granted on 2 May 1989.

The defendants engaged a new solicitor and applied to set aside the said order on the following grounds:

(i) that the previous solicitor's failure to oppose the plaintiff's application was done contrary to the instructions given.

(ii) that the Menteri Besar had promised/represented that the defendants could occupy the disputed land.

(iii) that the plaintiffs having charged the disputed land to MBf Property Services Sdn. Bhd. had no longer any locus standi to maintain this action.

The defendants also applied for stay of execution pending the outcome of a suit filed in Shah Alam High Court wherein the subject matter is the same disputed land.

Held:

[1] The order granted on 2 May 1989 was not a judgment in default on the contrary it is a judgment given after a full hearing. Consequently if the defendants were not happy about it they should have applied for further argument in open Court within the time specified failing which they cannot apply to reopen the case as is being done here. Their only recourse is to appeal to the Supreme Court. In so far as this Court is concerned the defendants are estopped on the principle of res judicata from making the application. It is surely inappropriate to allow the defendants to re-open the very same issue on the ground that they did not instruct their then Counsel not to oppose the plaintiff's application.Such a state of affairs cannot and must not be tolerated for otherwise there would be no finality in litigation thereby rendering the doctrine of res judicata ineffective.

[2] The defendants can only have right to occupy the disputed land if, and only if, they had obtained the right to occupy the said land by way of the National Land Code. Adverse possession regardless of the period can never give the defendants the right to occupy the

disputed land pursuant to ss. 48 and 341 of the National Land Code. The promise or representation of the Menteri Besar of Selangor allowing the defendants to occupy the disputed land cannot in law and in equity be pleaded against the state authority.

[3] The plaintiff charging the disputed land to MBf to secure loans from third parties and also allowing MBf Property Services Sdn. Bhd. to develop the disputed land is no concern of the defendant. The matter is between the state authority and the plaintiff and should the plaintiff breach any of the conditions of the alienation of the land it is answerable to the state authority. It follows therefore that even if there had been a breach of the condition of the alienation it does not in any way affect the status of the defendants as illegal squatters of the disputed land.

[4] Having found that the defendants are illegal squatters order of possession should be granted to the plaintiff. There is no statutory or inherent power to stay the execution of the order.

[Defendants application dismissed.]

Cases referred to:

Mitchell v. Harris Engineering Co. Ltd. [1967] 2 QB 803 ***(cit)***

Government of Malaysia v. Dato' Chong Kok Lim [1973] 2 MLJ 74 ***(foll)***

Sidek bin Haji Mohamad & 461 Ors. v The Government of the State of Perak and Ors. [1982] 1 MLJ 313 ***(foll)***

Lesco Dvpt. Corp. Sdn. Bhd. v. Yap Chong Lan & Ors. [1984] 2 MLJ 122 ***(foll)***

Department of the Environment v. James [1972] 3 All ER 629 ***(cons)***

Legislation referred to:

Courts of Judicature Act 1964, s. 68

National Land Code 1965, ss. 40, 340, 341

Rules of the High Court 1980, O. 56 rr. 2(1), (2)

For the plaintiff - Y.M. Siew; M/s. Raja Eleena Siew Ang & Tan

For the defendants - K. Kanawagi; M/s. Khana & Co.

JUDGMENT

Lim Beng Choon J:

This was an application made by the 65 defendants by way of notice of motion to set aside the order of possession granted by this Court on 2 May 1989 in respect of the land held under H.S. (D) 18315 P.T. NO. 22712 Mukim of Ampang Daerah Ulu Langat, Negeri Selangor Darul Ehsan (hereinafter referred to as "the disputed land") of which the plaintiff was and still is the registered proprietor. Alternatively the defendants prayed that the execution of the said order of possession be stayed pending the outcome of the action *vide* Originating Motion No. 25-1-1989 filed between one Ismail bin Ahmad and 103 others against the plaintiff and two others in the High Court at Shah Alam.

Before I proceed to deal with the motion of the 65 defendants it is useful to give a brief account of the events that led to the defendants making this application.

On 9 March 1989, the plaintiff applied by way of originating summons for an order that the plaintiff be allowed to recover possession of the disputed land on the ground that the plaintiff is entitled to possession and that the defendants are in occupation without licence or consent. The affidavit in support of its application was affirmed by one Mohd. Shefak bin Isa on 9 March 1988. I need only to reproduce the pertinent averments made by the deponent

of that affidavit. He averred that the plaintiff was the registered proprietor of the disputed land and that originally there were 117 occupiers and/or owners of squatter buildings and/or structures illegally constructed on the disputed land and had been residing thereat without the consent or authority of the plaintiff. The plaintiff was desirous of developing the disputed land into a housing estate and had obtained the necessary approval dated 10 August 1988 from the Pejabat Tanah Daerah Ulu Langat to do so. In the circumstances the plaintiff therefore tried to negotiate with the 117 squatters by making certain offers to them. One hundred twelve of the squatters accepted the offers and vacated the land but the 65 defendants refused to do so. The defendants filed in their joint memorandum of appearance on 24 April 1989 through their former solicitors M/s Khairuddin & Associates.

The plaintiff's application came up for hearing on 27 April 1989. At the hearing Encik Azizan Othman the then Counsel for the defendants asked for a postponement in order to get instructions from the defendants. The matter was postponed to 2 May 1989. At the resumed hearing of the plaintiff's application on 2 May 1989 Encik Azizan Othman informed the Court he had no instruction to contest the application. After hearing submission of the Counsel for the plaintiff and reading the affidavit of Encik Mohd. Shefak I granted an order in terms of the application. The order was duly extracted on 24 May 1989.

Subsequently the defendants consulted and appointed a firm of solicitors known as M/s. Khana & Co. which firm filed in a notice of change of solicitors on 20 July 1989 and on the same day through their new solicitors the defendants filed in the Notice of Motion which I have mentioned earlier. In the affidavit in support of the motion affirmed by one of the defendants, Ahmad bin Shahlan, he said that he was authorised to affirm and filed the affidavit on his own behalf as well as on behalf of all the defendants except defendants No. 2, 13, 20, 23, 24, 25, 34 and 48 who were no more residing on the disputed land. Defendant No. 6 apparently had accepted the offers of the plaintiff and was no longer interested in the matter. Again I need only to set out the pertinent averments of the deponent of this affidavit. He averred that his former solicitors on record had informed his present solicitors that they had instruction only to obtain more time to enable the defendants to negotiate a settlement with the plaintiff. It was for that reason that his former solicitors did not oppose the application for possession made by the plaintiff. When the plaintiff issued the 'writ' (I suppose he meant the originating summons of the plaintiff) against the defendants he and the other defendants appointed a committee to engage a lawyer to resist the plaintiff's application. He did not know what transpired between the committee and the then solicitors. However when the then solicitors failed to oppose the plaintiff's application it was done contrary to the instruction the defendants gave to the committee. He was not disputing that the plaintiff was the registered owner of the land in dispute but said that there was a dispute "as to how the plaintiff's name came on the register". He then went on to aver that the disputed land was and still is subject to a Court action *vide* Originating Motion 25-1-89 where 104 other occupants sought *inter alia* a declaration the alienation of the disputed land by the 1st defendant and 2nd defendant in that action namely the Menteri Besar of Selangor and the Executive Council of the State of Selangor to the 3rd defendant in that action namely the plaintiff in the present case was unreasonable and therefore null and/or invalid. He therefore claimed that if the claim by the 104 occupants in the Shah Alam Court case should succeed then the claim of the plaintiff in the present action would be extinguished and with it the possession order issued by this Court on 2 May 1989. That, he said, was a good reason for a stay of execution until the final outcome of the Shah Alam case. He also denied that he and the other defendants were squatters illegally occupying the disputed land because while

the plaintiff only acquired the title by alienation of the disputed land on 8 June 1988 the defendants on the other hand had been staying on the said land pursuant to an oral agreement given by the Menteri Besar of Selangor since 1969. Moreover at the time when the land was alienated to the plaintiff, it was only a RM2 paid up company and had no capital and/or financial ability to develop the disputed land. Yet further when the plaintiff obtained the approval letter to develop the disputed land into a housing estate from the Pejabat Tanah, Ulu Langat on 10 August 1988 it did not have a housing developer's licence. To support his contention he produced a letter annexed as Exh. D3 to his affidavit to show that the plaintiff only obtained a developer's licence on 28 April 1989 valied until 27 April 1994. Although there was negotiation between the defendants and the plaintiff there was never any agreement whereby the defendants agreed to vacate the disputed land. He again emphasised that sometime in January 1989, the present Menteri Besar of Selangor confirmed the previous Menteri Besar's oral agreement made to the defendants.

On 21 July 1989 the defendants by an *ex parte* summons-in-chambers applied for an order to stay execution of the order of possession dated 2 May 1989 until the hearing and final outcome of the *inter-partes* application to set aside and/or to stay all further execution as applied by the defendants on 20 July 1989. In support of the application Encik Ahmad bin Shahlan affirmed another affidavit on 21 July 1989. His main complaint at that time was that even though the plaintiff was Kabra Holdings Sdn. Bhd. the applicant for the order of possession was KAB Sdn. Bhd. as stated in the body of the plaintiff's application. He therefore averred that KAB Sdn .Bhd. was not a party to the action, the irregularity was fatal and the order of possession should be set aside. I granted a short stay of execution of the order for possession and upon the defendants' subsequent application by way of *ex parte* summons-in-chambers to extend the stay made earlier, I decided to and did extend the stay until the hearing of the defendants' *inter-partes* application to set aside the order of possession of 2 May 1989. In its supporting affidavit affirmed by Encik Ahmad bin Shahlan affirmed on 1 August 1989 he produced an affidavit affirmed by one Ismail bin Ahmad on 27 July 1989 in the action in the Shah Alam Court as exhibit annexed to his affidavit and said that the defendants adopted what was said by Ismail bin Ahmad in his affidavit. Ismail's main complaints were that it was unreasonable for the state authority to alienate not only the disputed land to the plaintiff but also another piece of land held under H.S. (D) 18409 P.T. 23171 Mukim of Ampang Negeri Selangor Darul Ehsan ('the 2nd land') as the plaintiff was financially unable to develop the land. Although the plaintiff subsequently increased its paid up capital to RM250,000 the main shareholder one Ismail Farouk owned 249,999 shares. It was therefore unreasonable to alienate two pieces of prime land to one person and deprive the defendants the right to occupy the land. Moreover it was stated that the 3rd defendant's (the plaintiff in this action) application for state land was *ultra vires* its memorandum and articles of association since at the material time the 3rd defendant (the plaintiff in this action) did not possess a valid developer's licence.

On 30 August 1989 the plaintiff applied to set aside the *ex parte* summons-in-chambers of the defendant dated 21 July 1989 and 1 August 1989 respectively and for an order directing an enquiry to be held by the Court for assessment of damages to be paid by the defendants to the plaintiff. In support of the application Encik Mohd. Shafek affirmed an affidavit on 30 August 1989 in which he said that in granting the final and conclusive order of possession on 2 May 1989 after hearing arguments from Counsel of both parties the defendants could not be allowed to apply to set aside the said order; they should have appealed to the Supreme Court to reverse the order if they could. In so far as the proceedings in this Court were concerned the doctrine of *res judicata/issue estoppal* must apply. Furthermore, the plaintiff

had by virtue of s. 340 of the National Land Code 1965 obtained an indefeasible title immuned from challenge since none of the exceptions to the indefeasibility rule (as embodied in the said s. 340) had any application to the facts of this case. In so far as the alienation of the land, it was the ruler of the state and not the Menteri Besar that had the authority to alienate land at its discretion. Therefore all the allegations of the defendants were irrelevant and frivolous. In any event as regards to allegations of the insufficiency of the paid up capital of the plaintiff company and that the plaintiff company had no developer's licence at the material time even if that were true, the sufficiency of the paid up capital and the possession of a developer's licence were not prerequisite for the alienation of land to any corporation having power under its constitution to hold land.

Finally the 36th defendant, Ibrahim bin Dalip affirmed an affidavit on 20 July 1990 in which he alleged that the plaintiff had charged the disputed land to MBf Finance Bhd. ("MBf") for a total of RM 32,732,762.79 in respect of loans given by MBf to third parties and therefore MBf Property Services Sdn. Bhd. undertook to clear and level the disputed land, put up fences and completed two model building. MBf Property Services Bhd. claimed that the plaintiff had sold the land to MBf and the parties had executed transfer documents in escrow in order that MBf or their nominee could register the same later on. MBf Property Services Sdn. Bhd. had been sending out notices to various defendants making offers to them to vacate the disputed land. The plaintiff, having sold the disputed land to MBf, had no longer any *locus standi* to maintain this action.

There is a secondary issue which I should mention. Obviously upon realising that there had been a typing error in the body of the plaintiff's Originating Summons in which the plaintiff was described as KAB Sdn. Bhd. instead of Kabra Holdings Sdn. Bhd. the plaintiff applied on 24 October 1989 to amend and regularise the mistake. The matter was heard by the Senior Assistant Registrar of this Court ("the SAR") who allowed the amendment to be made. The defendants being dissatisfied with the SAR's decision appealed to me to set aside the SAR's order. Upon the matter came before me for hearing on 20 January 1990 I upheld the SAR's decision as I was of the view that the error was in the nature of a misnomer and could not have misled the defendants. Indeed at the hearing of the plaintiff's Originating Summons on 2 May 1989 their then Counsel did not bother to take this point up as an issue. The defendants fully well knew that it was Kabra Holdings Sdn. Bhd. who was the plaintiff and who was asking for an order of possession - see *Mitchell v. Harris Engineering Co. Ltd.* [1967] 2 QB. 803. After having handed down my decision Counsel for the defendant sought leave to appeal to the Supreme Court against my decision. I rejected the application for leave but Counsel for the defendant sought a postponement in order to apply to the Supreme Court for leave to appeal against my decision. I therefore postponed the hearing of the substantive matter. Be that as it may apparently either the Counsel for the defendants had not taken up the matter on appeal to the Supreme Court or that the Supreme Court too had not granted leave as I had no indication that leave had been granted to the defendants to appeal to the Supreme Court against my decision.

Reverting to the substantive issue namely the setting aside of the order of possession issued by this Court on 2 May 1989 or alternatively the stay of the execution of the order of possession, I do not propose to set out the submissions of the Counsel acting for the respective parties. I do not propose to do so not out of disrespect to them. Indeed their submissions have been very useful in assisting me in arriving at my decision. I do not propose to do so since I shall be touching on the relevant points raised in their respective submissions presently.

It may be recalled that when the originating summons of the plaintiff for an order of possession came out for hearing on 2 May 1989 the Counsel for the defendants did not oppose the plaintiff's application on the ground that he had no instructions from the defendants to contest the application. Thereupon I directed the Counsel for the plaintiff to make his submission. After hearing the submission of the said Counsel I thereafter granted an order in term of the plaintiff's application. Under the circumstances I cannot agree with the present Counsel for the defendants when he said that the judgment made by me on 2 May 1989 was a default judgment. On the contrary it is a judgment given after a full hearing. Consequently if the defendants were not happy about it they should have applied under O. 56 r. 2(2) of the Rules of High Court 1980 ('the RHC') for further argument in open Court within the time specified in the subrule (2) failing which they cannot apply to re-open the case, as is being done here. Their only recourse is to appeal to the Supreme Court against my decision pursuant to O. 56 r. 2(1) read with s. 68 of the Courts of Judicature Act 1964. In so far as this Court is concerned the defendants are estopped on the principle of *res judicata* from making the application. Thus in *Government of Malaysia v. Dato' Chong Kok Lim* [1973] 2 MLJ 74, Sharma J in citing a passage from the judgment from an Indian Supreme Court case said at p. 76:

> The principle of *res judicata* is based on the need of giving a finality to judicial decisions. That it says is that once a *res* is *judicata*, it shall be not adjudged again. Primarily it applies as between past litigation and future litigation. When a matter - whether on a question of fact or a question of law - has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of *res judicata* is embodied in relation to suits in s. 11 of the Code of Civil Procedure; but even where s. 11 does not apply, the principle of *res judicata* has been applied by Courts for the purpose of achieving finality in litigation. The result of this is that the original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct.
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> The principle of *res judicata* applies also as between two stages in the same litigation to this extent that a Court, whether the trial Court or a higher Court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.
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> A decision given by a Court at one stage on a particular matter or issue is binding on it at a later stage in the same suit or in a subsequent suit. (See *Peareth v. Marriott, Hook v. Administrator - General of Bengal & Ors.* and in the matter of the *Trusts of the Will of Tan Tye (Deceased) Yap Liang Neo v. Tan Yew Ghee and Anor.*). Parties cannot raise a second time in the same suit an issue that has already been determined either expressly or by necessary implication.

Further down at the same page Sharma J went on to say:

> The rule is that a matter which might and ought to have been made a ground of attack or defence becomes a matter which was constructively in issue. A matter which might and ought to have been made a ground of attack or defence in the former application but which was not alleged as such a ground of attack or defence is for the purposes of the plea of *res judicata* deemed to have been a matter directly and substantially in issue in the former application, that is to say, though it may not have been actually directly and substantially in issue it is still regarded as, having been constructively, directly and substantially in issue. There can be no distinction between a claim that was actually made and a claim which might and ought to have been made. The plea of *res judicata* applies, except in special cases, not only to points on which the Court was actually required by the parties to form an opinion and to pronounce

its judgment thereupon but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time. It is only where the plea which is sought to be raised in the subsequent proceedings was not available to the party at the time of the previous proceedings that the decision cannot be constructively *res judicata.*

The principle laid down by Sharma J applied equally well in the present case. Bearing in mind that the defendants upon service of the said originating summons on them chose to form a committee to appoint an advocate and solicitor to act for them and upon hearing of the said originating summons their Counsel chose not to oppose the plaintiff's application on the ground that he had not been instructed by the defendants to contest the plaintiff's application, it is surely inappropriate for me to allow the defendants to re-open the very same issue on the ground that they did not instruct their then Counsel not to oppose the plaintiff's application. To do so I would be opening a floodgate to litigants whose Counsel had categorically submitted at the trials of their cases that the litigants were not opposing applications made by their opponents and later resiled from the stand and asked that their cases be retried. Such a state of affairs cannot and must not be tolerated for otherwise there would be no finality in litigation thereby rendering the doctrine of *res judicata* ineffective. In arriving at this conclusion I have not overlooked the submission of the Counsel for the defendants where he contended that there was an irregularity of the service of the said Originating Summons on the defendants. If that be so, they should not have entered an unconditional appearance and allowed the case to proceed to trial. They should have entered a conditional appearance and have the said originating summons struck out on the ground of ineffective service. In any event I cannot see what was wrong with the service of the originating summons. It was served in accordance with O. 89 and the defendants were fully aware of the service of the said originating summons for if it were otherwise they would not have entered an unconditional appearance. On this ground of *res judicata* I am satisfied that the notice of motion of the defendants to set aside the judgment of this Court dated 2 May 1989 must be dismissed with costs.

Even if I were wrong in arriving at the afore said decision, I am equally satisfied that the application of the defendants made by way of notice of motion has no merits at all. The facts in the present case are similar if not identical with the facts in the case of *Sidek bin Haji Mohamad & 461 Ors. v. The Government of the State of Perak & Ors.* [1982]1 MLJ 313 at 314. In that case Raja Azlan Shah CJ Malaysia (as he then was) said quite clearly and emphatically that:

Squatters have no right either in law or in equity (see *Mc Phail v. Persons Unknown CA*). It does not lie in their months to assert that they used and occupied the land as squatters.

In the present case the defendants are not denying that the disputed land was rightly and properly alienated to the plaintiff. But they said they had priority to occupy the said land albeit as squatters because the previous Menteri Besar of Selangor as well as the present Menteri Besar of Selangor had promised to allow them to occupy the said land. The answer to the claim of the defendants can be found in the *Sidek* case (*supra*) where it has been said at p. 314 that:

Assuming what the State Director of Lands and Mines said in the Utusan Melayu is true, can he bind the State Government? The short answer is that he had no authority to bind the government to alienate state land to the settlers. For this a formal resolution of the state authority is necessary. The want of authority was clearly pleaded, and is a formidable obstacle to any contention that the appellants' claim lay in estoppel.

The only way to obtain State land is by way of the National Land Code. The case falls within the broad principle that "where an act creates an obligation, and empowers the obligation in a specified manner, we take it as a general rule that performance cannot be enforced in any other manner": (see *Doc d. Rochester (Bp.) v. Bridges*). Likewise here in the case of landless. It cannot have been intended by parliament in enacting the National Land Code that every person who was in need of land should be able to sue the government for it or to take the law into his own hands for the purpose.

The defendants can only have right to occupy the disputed land if, and only if, they had obtained the right to occupy the said land by way of the National Land Code. Adverse possession regardless of the period can never give the defendants the right to occupy the disputed land pursuant to ss. 48 and 341 of the National Land Code. Neither could the promise of the Menteri Besar of Selangor give them the right to occupy the land. I shall have more to say regarding the power or rather the lack of power on the part of the said Menteri Besar to unilaterally alienate land.

Counsel for the defendants then urged me to hold that the alienation of the disputed land was illegal because at the material time the plaintiff did not have financial capacity to develop the said land. In addition the plaintiff had no developer's licence to do so. I cannot agree with the contentions of the learned Counsel simply because the discretion to alienate land lies completely with the state authority and it is for them to impose any condition in alienating the land which condition would be endorsed on the grant. As far as I can see there are no conditions in the grant that the alienation of the disputed land to the plaintiff requiring the plaintiff to be financially sound to develop the land and that it must be in possession of a developer's licence. That being the case there is nothing to stop the state authority to alienate the said land to the plaintiff. The contention of illegality in the alienation is to my mind unsustainable.

As stated earlier the case for the defendants is pegged on the oral promise of the Menteri Besar which they said amounted to committing the state authority to allowing them to occupy the disputed land. It is clear that by virtue of the provisions of the National Land Code only the state authority as defined in s. 5 of the said Code can properly alienate lands to any person or corporation and certain mandatory steps have to be taken before a person or a corporation can be said to have a right to occupy any State land. There is no provision under the National Land Code to enable the state authority to delegate their power of alienation of State land to any person or authority. That being the case whatever promise or representation made by the Menteri Besar to allow the defendants to occupy the disputed land cannot in law and in equity be pleaded against the state authority. Thus in *Lesco Dvpt. Corp. Sdn. Bhd. v. Yap Chong Lan & Ors.* [1984] 2 MLJ 123 per judgment of Abdoolcader FJ it has been held that the equity sought to be raised by the respondents in that case against the state authority would establish rights in respect of State land which is prevented by statute (namely the National Land Code 1965) from creating other than in the prescribed manner cannot be sustained because it is wrong to introduce into public administrative law concepts such equitable estoppel which are essentially aids to the doing of justice in private law. It follows therefore even if the Menteri Besar while acting in the apparent scope of his authority "to alienate" the disputed land to the defendants, that was not binding on the state authority because the state authority alone has power under the National Land Code 1965 to alienate state land.

Another matter raised by Counsel for the defendants that should be considered is that after the disputed land was alienated to the plaintiff, it charged it to MBf to secure loans for third parties and also allowed MBf Property Services Sdn. Bhd. to develop the disputed land.

That to my mind is no concern of the defendants. The matter is between the state authority and the plaintiff and should the plaintiff breached any of the conditions of the alienation of the land it is answerable to the state authority. It follows therefore even if there had been a breach of the conditions of the alienation it does not in any way affect the status of the defendants as illegal squatters on the disputed land.

The last matter which I need to consider is the application to stay execution of the order of possession granted to the plaintiff on 2 May 1989. The only ground relied on by the defendants is that there is a pending suit by 104 squatters on the same land instituted in the Shah Alam High Court. Counsel for the defendants contended that should the Shah Alam case be heard and judgment given in favour of the 104 squatters there then the order of possession granted by this Court would be rendered a nullity. With due respect I cannot accept the argument. Here I am dealing with a case involving the 65 defendants in this action. Having found that they are illegal squatters I am bound to grant the order of possession to the plaintiff. There is no statutory or inherent power for me to stay the execution of the order - see *Department of the Environment v. James* [1972]3 All ER 629 @ 630. I am not concerned with the Shah Alam case instituted by other persons. My decision only binds the defendants in the present case; it does not affect the 104 plaintiffs in the Shah Alam case. Whatever decision that would be made by the Shah Alam High Court would not render my decision nugatory bearing in mind that both the Shah Alam High Court and this High Court has concurrent jurisdiction. The matter can only be dissolved by the Supreme Court. As it is my decision in the present case has been brought on appeal to the Supreme Court. It is for the defendants to convince the Supreme Court that I was wrong to disallow a stay of the execution of the order of possession granted on 2 May 1989.

In the circumstances I have no hesitation in dismissing the application of the defendants to set aside the order of possession granted by this Court on 2 May 1989 and also the application to stay the execution of the said order. I must also order that costs of the proceeding be paid by the defendants to the plaintiff.

Also found at [1992] 2 CLJ 817